



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

[REDACTED]

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**PRELIMINARY RECITALS**

Pursuant to a petition filed May 29, 2015, under Wis. Admin. Code § HA 3.03, to review a decision by the La Crosse County Department of Human Services in regard to Child Care (CC) benefits, a hearing was held on July 8, 2015, by telephone.

The issue for determination is whether petitioner's appeal was timely filed.

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: [REDACTED]

La Crosse County Department of Human Services  
300 N. 4th Street  
PO Box 4002  
[REDACTED]

**ADMINISTRATIVE LAW JUDGE:**

Nancy J. Gagnon  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of La Crosse County.
2. On March 5, 2015, the county agency mailed a written notice of negative action, *Child Care Overpayment Notice*, to the petitioner at his correct address. The *Notice* was not returned to the agency as undelivered. The petitioner received this *Notice*.

3. The petitioner filed a hearing request that was received by the Division of Hearings and Appeals on May 29, 2015.
4. The negative action in this case was a CC overpayment determination.

### **DISCUSSION**

A hearing officer can only hear cases on the merits if there is jurisdiction to do so. There is no jurisdiction if a hearing request is untimely. An appeal of a negative action by the Department, or its agents, concerning Child Care Benefits must be filed within **45** days of the notice or the effective date of the negative action, whichever is later. Wisconsin Stat. § 49.152(1), WI Admin Code §HA 3.05(3). A negative action can be the denial of an application or a denial of payment of Child Care Benefits. Because the petitioner's appeal was filed **85** days after the county agency's negative action concerning Child Care Benefits, it is untimely.

The petitioner explained his failure to timely file by stating that he telephoned agency worker [REDACTED] [REDACTED] requested a fair hearing request form, and that the form was not provided to him in a timely fashion. [REDACTED]'s contemporaneous notes of their conversations on April 16 and 17, do not state that the petitioner requested a hearing form. Rather, he inquired about hearing process. A specific form is not required to request a fair hearing with this office; a short letter will do. [REDACTED] did not prevent the petitioner from timely filing his hearing request.

### **CONCLUSIONS OF LAW**

There is no jurisdiction as the appeal is untimely.

**THEREFORE, it is**

### **ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

### **APPEAL TO COURT**

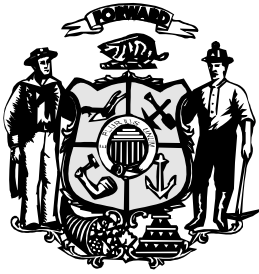
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,  
Wisconsin, this 9th day of July, 2015

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\sNancy J. Gagnon  
Administrative Law Judge  
Division of Hearings and Appeals



## State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on July 9, 2015.

La Crosse County Department of Human Services  
Public Assistance Collection Unit  
Child Care Fraud